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EXAMINER

BERRIOS, JENNIFER A

ART UNIT	PAPER NUMBER
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1613

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11. Continuation Sheet

Response to Arguments

Examiner would like to note that while Applicant has corrected most of the informalities objected to in claim 1, not all informalities were corrected (i.e. nanaomolar, line 7 of claim 1), as such the objection is maintained.

Applicant argues that they have used the data from Fig. 64 to shows the concentration of rapamycin starting from about 1×10^{-10} or 0.1 nanomolar and rising.

This is not persuasive. While the label on the axis of Fig. 64 embraces the claimed range, the individual data points present in the figure do not correspond to this range, therefore there is no reason to believe based on this figure alone that the claimed range is contemplated by the instant disclosure.

Applicant argues that the references taken as a whole fail to disclose or even suggest a medical device with two specific drugs in a specific dosage in a two distinct polymer structure with a specific polymer ratio. None of the references disclose the use of the recited nanomolar concentrations on the same device as claimed. Accordingly, reconsideration and withdrawal of the rejection is respectfully requested.

This is not persuasive, The combination of prior art references, as discussed in the advisory action mailed 6/22/2010 and the office actions mailed 4/12/2010, specifically page 4, discloses an implantable structuring having a basecoat matrix comprising polyvinylidene fluoride and hexafluoropropylene (PVDF/HFP) in a 60/40 weight ratio and a top coat comprising polybutylmethacrylate (BMA). The drug dosages of topotecan and rapamycin (nanomolar concentration) are specifically addressed in the office action mailed 5/20/2011.

Applicant further argues "why should the references be combined to create a multiple class polymers system with drugs when it's known that single drugs and single polymers also

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work.” It appears examiner is piecing art together by using the claims as a template and this is impermissible.

This is not persuasive. Examiner would like to note that Lentz alone teaches multiple polymers along with a drug. Furthermore, it is a well-established principle in the MPEP that compositions that are taught in the art to be used for the same purpose can be combined in order to create a 3rd composition for the same purpose.

MPEP 2144.06 recites “*It is prima facie obvious to combine two compositions each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used for the very same purpose.... [T]he idea of combining them flows logically from their having been individually taught in the prior art.*” *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980).”

As for the assertion that the rejection is based on hindsight, as noted in MPEP 2145, any obviousness rejection is in a sense necessarily a reconstruction based on hindsight reasoning and is not improper if it takes into account only knowledge within the level of ordinary skill in the art at the time the claimed invention was made. Applicants have provided no evidence that the rejection is not based on knowledge available to those of ordinary skill in the art.

/Jennifer A Berrios/
Examiner, Art Unit 1613

/Tracy Vivlemore/
Primary Examiner, Art Unit 1635